

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**IN RE:
PACKET CONSTRUCTION LLC**

DEBTOR

§
§
§
§
§ **BANKRUPTCY CASE NO. 23-10860**

**MOTION FOR THE ENTRY OF AN ORDER ENFORCING AND RESTATING THE
AUTOMATIC STAY AND ENTRY OF AN ORDER PURSUANT TO SECTIONS 105(A)
AND 362 OF THE BANKRUPTCY CODE HOLDING ALPINE ADVANCE 5 LLC AND
OTHERS IN CONTEMPT FOR VIOLATING THE AUTOMATIC STAY**

**THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS. IF
NO TIMELY RESPONSE IS FILED WITHIN 21 DAYS FROM THE DATE OF SERVICE, THE
RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.**

A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Packet Construction LLC (“Debtor” or “Packet”) and files this Motion for the Entry of an Order Enforcing and Restating the Automatic Stay, pursuant to Sections 105(a) and 362 of the Bankruptcy Code and for contempt against Alpine Advance 5 LLC and their Attorney Gene Rosen and in support thereof the Debtor respectfully represent the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to the provisions of 28 U.S.C. § 1334 and 157. This matter constitutes a “core” proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. § 1408 and 1409. The statutory predicates for the relief requested are §§ 105(a) and 362 of the Bankruptcy Code.

FACTUAL BACKGROUND

2. On October 12, 2023, (“Packet Petition Date), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

3. After October 12, 2023, Debtor continued to manage and operate its civil construction for electric utilities, site work and foundations for substations and power lines business as Debtor-In-Possession pursuant to §§1107 and 1108 of the Bankruptcy Code.

4. Notice of the bankruptcy filing was sent to all creditors on the day of filing for Packet Construction LLC on October 12, 2023.

5. Notice was repeatedly provided to creditor Alpine Advance 5 LLC and its attorney.

6. On October 12, 2023, Debtor's counsel mailed to each creditor a notice of bankruptcy filing, which included the Alpine Advance 5 LLC. The address listed on Schedule D matches the address listed on Alpine Advance 5 LLC's contract. *See Exhibit A(Alpine Advance Contract) and B(Schedule D with Court Mailing matrix).*

7. Immediately upon filing of the bankruptcy case, Debtor sent notice of the bankruptcy to Alpine Advance 5 LLC to ops@Alpineadvance.net. This email contained information regarding cash collateral and hearing information. *See Exhibit C.*

8. On November 3, 2023, weeks after this Chapter 11 was filed, Alpine Advance 5 LLC's attorney Gene W. Rosen incredibly sent out a letter requesting that any funds being held for Packet Construction LLC be turned over to Alpine Advance 5 LLC as the secured party per their UCC lien. *See attached Letter from Alpine Advance 5 LLC's Attorney, Exhibit D.*

9. On November 3, 2023, upon receiving the letter from Debtor representative, Debtor's Attorney Robert Chip Lane sent an email to Alpine Advance 5 LLC's Attorney Gene Rosen regarding the letter and notice thereof of the violation of the automatic stay. *See attached Exhibit E.*

10. No response has been received as to the email on November 3, 2023, including no return call per Debtor's attorney's voicemail the following day.

11. Now, nearly two-weeks later, Alpine's counsel emailed counsel for a customer of the Debtor continuing to assert its alleged entitled to receivables and continue to insist that the receivables not be sent to the Debtor's estate in direct contradiction to this Court's order allowing the debtor to use Cash Collateral. *See attached Exhibit F.*

12. Counsel for the Debtor's customer forwarded Exhibit F to the undersigned counsel to alert Debtor that receivables, which are substantial, will continue to be held until a court order on this issue is received. Counsel for the Debtor's customer is receiving a copy of this motion and proposed order, and will be provided notice of any hearing that is set by the Court.

13. Alpine Advance 5 LLC and its Attorney Gene W. Rosen, continue to violate the automatic stay by trying to collect from customers of the Debtor for debt owed pre-petition to Alpine Advance 5 LLC.

RELIEF REQUESTED

14. Pursuant to sections 105(a) and 362 of the Bankruptcy Code, the Debtor requests the entry of an order, substantially in the form as the attached Exhibit A, enforcing and restating the automatic stay provisions of the Bankruptcy Code.

15. Specifically, the Debtor requests that all persons (including individuals, partnerships, corporations, and other entities and those acting on their behalf), whether of the United States, any state or locality therein or any territory or possession thereof, be restrained and enjoined from:

- a. Commencing or continuing any judicial, administrative, or other action or proceeding against the Debtor that was or could have commenced before the commencement of this Chapter 11 case, or recovering a claim against the Debtor that arose prior to the commencement of this case;

- b. Enforcing, against the Debtor or property of its estate, a writ or judgment or order obtained before the commencement of this case;
- c. Taking any action to obtain possession of property of the Debtor's estate or to exercise control over property of the estate or interfere in any way with the continued operation of the Debtor's business;
- d. Taking any action to create, perfect, or enforce a writ or lien against property of the Debtor's estate;
- e. Taking any action to create, perfect, or enforce against property of the Debtor any lien to the extent that such lien secures a claim that arose prior to the commencement of this case;
- f. Taking any action to collect, assess, or recovery a claim against the Debtors that arose prior to the commencement of this case.

16. Additionally, Debtor requests that, pursuant to sections 105(a) and 362 of the Bankruptcy Code that the Court enter an order finding that Alpine Advance 5 LLC and its Attorney Gene W. Rosen have knowingly violated the automatic stay and hold those parties in contempt.

17. As these stay violations may be causing irreparable harm to Debtor's ongoing business operations, Debtor respectfully requests that its rights be preserved in the event that an Adversary Proceeding or other proceeding must be filed.

ARGUMENTS AND AUTHORITIES

18. The automatic stay is one of the fundamental debtor protections provided by the bankruptcy code. It is designed to stop all collection efforts, harassment, and permit the debtor to attempt a repayment or reorganization plan.

19. Section 105(a) of the Bankruptcy Code further empowers this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the

Bankruptcy Code].” 11 U.S.C. § 105(a) (2010). Admittedly, section 105(a) is not a roving license to do equity but must be confined to carrying out the established provisions of the Bankruptcy Code. Here, the relief requested is already the subject of section 362 of the Bankruptcy Code. Such relief, therefore, falls squarely within the provisions and purpose of section 105(a) of the Bankruptcy Code.

20. As a result of the commencement of this case, and by operation of law pursuant to section 362 of the Bankruptcy Code, the automatic stay enjoins all persons from, among other things, taking any action to obtain possession of property of the estate or to exercise control over property of the estate. The injunction contained in section 362 of the Bankruptcy Code constitutes a fundamental protection for Debtors, which, in combination with other provisions of the Bankruptcy Code, provides the Debtor with a “breathing spell from [its] creditors” that is essential to the Debtor’s ability to reorganize successfully. *See e.g., Browning v. Navarro*, 743 F.2d 1069, 1083 (5th Cir. 1984) (citations omitted).

21. Notwithstanding the fundamental nature of the automatic stay and the fact that such arises as a matter of law upon the commencement of a chapter 11 case, not all parties affected or potentially affected are aware of the aforementioned Bankruptcy Code provisions. Nor are all parties cognizant of the significance and impact of these provisions. Experience has shown that it is often necessary to advise third parties of the existence and effect of the automatic stay. Occasionally, it is necessary to commence proceedings in the bankruptcy court to enforce these provisions. Accordingly, it is not uncommon for a bankruptcy court to issue an order embodying and restating the provisions of sections 362 of the Bankruptcy Code.

22. Thus, even though an order of the sort sought by this Motion is not necessary to trigger the protections afforded the Debtor by section 362 of the Bankruptcy Code, the entry of such an order will be helpful for the Debtor in persuading its creditors of the existence and broad

scope of these protections. The granting of the relief requested will help ensure that other creditors, like Eleven Capital, do not continue violating the automatic stay.

23. Accordingly, the Debtor respectfully requests that this Court issue an order which substantially restates the applicable provisions of sections 362 of the Bankruptcy Code as applicable to all creditors and parties-in-interest. Granting the relief requested herein will minimize the disruption of the Debtor's business affairs. It will also proactively negate any future defense by Alpine Advance 5 LLC and their attorneys that they were unaware of the provisions of the automatic stay. Alpine Advance 5 LLC and their attorneys will effectively be on notice that any continued efforts to collect on pre-petition debt from customers are in violation of the automatic stay and this Court's orders.

24. Lastly, one of the primary purposes of the automatic stay is to protect the debtor's assets. *GATX Aircraft Corp. v. M/V Courtney Leigh*, 768 F.2d 711, 716 (5th Cir. 1985). Parties are enjoined from taking action against estate property. *See In Re Chesnut*, 422 F.298, 300 (5th Cir. 2005). Specifically, 11 U.S.C. § 362(a)(3) prevents "any act to obtain possession of property of the estate or to exercise control over property of the estate." Any property of the Debtor, whether physical or electronic, is property of the estate. All the Debtor's cash and receivables are property of the estate and any efforts to continue to remove those from the estate is a violation of the automatic stay.

25. In this instance, it is beyond argument that both Alpine Advance 5 LLC and its Attorneys continue to take actions in violation of the automatic stay despite direct warnings by the Debtor's counsel. They further continue to attempt to recover on a claim against the Debtor that arose before the commencement of the Bankruptcy case and continue to request that customers of the Debtor to have funds of the Debtor be transferred to Alpine Advance 5 LLC which are clearly

property of the estate. As Packet is now the debtor in possession under 11 U.S.C. §541, these actions indisputably constitute violations of the automatic stay. 11 U.S.C. §362a(1), (3), and (5).

KNOWING VIOLATIONS

26. The evidence is clear that these are not accidental violations of the automatic stay but are rather intentional acts of defiance against this Court and the automatic stay. Debtor's Counsel has warned Alpine Advance 5 LLC and its counsel to cease collection efforts and allow Customers to immediately release funds on hold, but those instructions have fallen on deaf ears.

27. Debtor requests that both Alpine Advance 5 LLC and its Attorney Gene W. Rosen be found to have committed knowing violations of the automatic stay, found in contempt for this conduct, and have monetary sanction imposed on them for this knowing conduct.

WHEREFORE, PREMISES CONSIDERED, the Debtor respectfully requests the Court enter an order, substantially in the form filed herewith, granting the relief requested in this Motion, and for such other and further relief as may be awarded by the Court.

Respectfully submitted,

THE LANE LAW FIRM, PLLC

/s/Robert C. Lane

Robert C. Lane

State Bar No. 24046263

notifications@lanelaw.com

Joshua Gordon

State Bar No. 24091592

Joshua.gordon@lanelaw.com

6200 Savoy, Suite 1150

Houston, Texas 77036

(713) 595-8200 Voice

(713) 595-8201 Facsimile

PROPOSED COUNSEL FOR DEBTOR

CERTIFICATE OF CONFERENCE

The undersigned counsel sent warning emails about the impending filing of this motion on November 3, 2023 and called Alpine's counsel as well on November 4, 2023 to again warn about the filing of this motion if the receivables were not released. Hearing no response and seeing the recent email to the Debtor's customer to continue holding receivables, it is believed they are opposed to the relief sought.

/s/ Robert C. Lane
Robert C. Lane

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Debtor's Motion to Enforce the Stay and Show Cause was served upon the parties listed on the service list below and the attached mailing matrix either via electronic notice by the court's ECF noticing system or by United States first class mail, postage prepaid, and by electronic mail as listed below on November 16, 2023:

Debtor:

Packet Construction LLC
14205 N Mopac Expy #514
Austin, Texas 78728

US Trustee:

Office of the U.S. Trustee
903 San Jacinto Blvd
Room 230
Austin, Texas 78701
Ustpreregion07.au.ecf@usdoj.gov

Additional U.S. First Class Mail, Postage Pre-Paid Notice:

Gene Rosen's Law Firm
Attn: Gene W. Rosen
200 Garden City Plaza
Suite 405
Garden City, New York 11530

Alpine Advance 5 LLC
46 Washington Street
Suite #6
Middletown, CT 06457

Additional Notices via Electronic Communication:

Ops@Alpineadvance.net

Gene@GeneRosen.com

/s/ Robert "Chip" Lane
Robert "Chip" Lane

Label Matrix for local noticing
0542-1
Case 23-10860-cgb
Western District of Texas
Austin
Thu Nov 16 08:17:36 CST 2023

Packet Construction LLC
PO Box 82668
Austin, TX 78708-2668

United States Trustee (SMG111)
United States Trustee
903 San Jacinto Blvd, Suite 230
Austin, TX 78701-2450

U.S. BANKRUPTCY COURT
903 SAN JACINTO, SUITE 322
AUSTIN, TX 78701-2450

Alpine Advance 5 LLC
228 Park Ave S
New York, NY 10003-1502

Alpine Advance 5 LLC
46 Washington Street Suite 6
Middletown, CT 06457-2861

Arcosa Aggregates
401 S Interstate Highway 45
Ferris, TX 75125-8801

Arcosa Aggregates Texas, LLC
c/o Ross, Smith & Binford, PC
Attn: Frances A. Smith
700 N. Pearl St., Suite 1610
Dallas, TX 75201-7459

Arcosa Aggregates Texas, LLC
c/o Ross, Smith & Binford, PC
Attn: Jason Binford
2003 N. Lamar Blvd., Suite 100
Austin, TX 78705-4932

Arnold Crushed Stone Inc
PO Box 632
Blum, TX 76627-0632

Arsenal Funding
8 West 36th Street, 7th Floor
New York, NY 10018-9774

Austin Lava, LLC
3107 Perry Lane
Austin, TX 78731-5341

Big Bend Services, LLC
PO Box 61226
Midland, TX 79711-1226

Big Bend Services, LLC
c/o Amber James
James Firm PLLC
1610 5th Avenue
Fort Worth, Texas 76104-4324

Braun Intertec
11001 Hampshire Ave S
Minneapolis, MN 55438-2424

(p)CATERPILLAR FINANCIAL SERVICES CORPORATION
2120 WEST END AVENUE
NASHVILLE TN 37203-5341

Caldwell East & Finlayson PLLC
One Riverwalk Place, 700 North St. Mary&
San Antonio, TX 78205

Callan Searcy
Attorney General's Office
Bankruptcy & Collections Division
P.O. Box 12548
Austin, TX 78711-2548

Capital Quarries
PO Box 105050
Jefferson City, MO 65110-5050

Caterpillar Financial Services Corporation
c/o John R. Nelson
Dickinson Wright PLLC
607 W. 3rd Street, Suite 2500
Austin, Texas 78701-4713

Caterpillar Financial Services Corporation
c/o Michelle D. Esparza
Dickinson Wright PLLC
221 N. Kansas Street, Suite 2500
El Paso, Texas 79901-1443

Centra Funding LLC
1400 Preston Road Suite 115
Houston, TX 77002

Centra Funding LLC
c/o Wright Law Group, PLLC
P.O. Box 105603
PMB 84356
Atlanta, GA 30348-5603

Comptroller of Public Accounts
C/O Office of the Attorney General
Bankruptcy - Collections Division MC-008
PO Box 12548
Austin TX 78711-2548

Connors Construction Inc.
2513 U.S. HWY 77
Lott, TX 76656-3595

David Neal LLC
899 FM 1947
Hillsboro, TX 76645-5157

Deans Stepp Law, LLP
325 N. Saint Paul St. Suite 1500
Dallas, TX 75201-3891

EnviroCon Systems Inc
PO Box 673048
Houston, TX 77267-3048

Eric Terry
Eric Terry Law, PLLC
3511 Broadway
San Antonio, TX 78209-6513

Ewald Kubota Inc.
PO Box 1287 71E
Seguin, TX 78156-1287

Ewald Kubota, Inc
c/o Audrey McDougal
1900 IH 10 West
Seguin, TX 78155-2353

Ewald Kubota, Inc. 13
c/o Elms Macchia, PLLC
2702 Treble Creek
San Antonio, TX 78258-4496

Force Logistics, LLC
28440 Verde Mountain Trl
San Antonio, TX 78261-2528

Fundfi Merchant Funding LLC
352 Fulton Avenue
Hempstead, NY 11550-3941

HKA Enterprises LLC
337 Spartangreen Blvd
Duncan, SC 29334-9220

HercRentals
27500 Riverview Center Blvd Suite 100
Bonita Springs, FL 34134-4328

JCB Financial, Inc.
1715 Morgan Lane
Collegeville, PA 19426-2875

Jason R. Kennedy, Attorney
Laperouse Kennedy, PC
5220 Spring Valley Rd., Suite 615
Dallas, Texas 75254-2431

John Miller
PO Box 82668
Austin, TX 78708-2668

Landpoint
525 Sawdust Rd #200
Spring, TX 77380-2386

Laperouse, P.C.
5220 Spring Valley Road Suite 615
Dallas, TX 75254-2431

Lonestar Forklift
5300 SE Loop 410
San Antonio, TX 78222-3922

Longview Truck Center
3132 TX-31
Longview, TX 75603

(p)MARSHALL & SINGLETON PLC
P O BOX 1955
JONESBORO AR 72403-1955

Martin Marietta Materials
1503 LBJ Freeway Suite 400
Dallas, TX 75234-6007

Mid-Tex Testing LLC
1301 New Dallas Hwy
Waco, TX 76705-2428

Mid-Tex Testing LLC
c/o David Tekell
Tekell & Tekell, LLP
400 Austin Avenue, Ste 1000
Waco, TX 76701-2145

NUCOR Harris Rebar
4700 Singleton Blvd
Dallas, TX 75212-3333

North Mill Credit Trust
81 Throckmorton Ave
Mill Valley, CA 94941-1930

North Mill Credit Trust
9 Executive Circle Suite 230
Irvine, CA 92614-4701

Nucor Harris Rebar South, LLC
c/o Jason R. Kennedy
Laperouse Kennedy, PC
5220 Spring Valley Rd, Suite 615
Dallas, TX 75254-2431

PTR - Premier Truck Rental
9138 Bluffton Road
Fort Wayne, IN 46809-3057

Packet Construction LLC
14205 N Mopac Expressway 514
Austin, TX 78728

Providence Equipment Finance
aka Providence Bank & Trust
PO Box 706
South Holland, IL 60473-0706

Providence Equipment Finance A Division of P
1555 S. Ardmore Avenue
Villa Park, IL 60181-3407

SBM Earthmoving & Construction
7931 N State Line Ave
Texarkana, TX 75503-1945

SIR, LLC
Harwin Dr
Houston, TX 77036

Simpson Crushed Stone
1948 County Rd 1234
Nemo, TX 76070-3003

Southeast Readi-Mix Products Inc
3001 South Boyd Drive
Carlsbad, NM 88220-4709

(p)SOUTHSTAR FINANCIAL LLC
ATTN SOUTHSTAR FINANCIAL LLC
840 LOWCOUNTRY BLVD
MOUNT PLEASANT SC 29464-3000

Suncoast Post-Tension, Ltd
c/o NCS
729 Miner Road
Highland Heights, OH 44143-2117

Terracon Consultants, Inc
10841 S Ridgeview Road
Olathe, KS 66061-6456

TexMix Concrete
PO Box 830
Leander, TX 78646-0830

Texas Comptroller of Public Accounts, Revenu
Callan C. Searcy
c/o Sherri K. Simpson, Paralegal
PO Box 12548
Austin, TX 78711-2548

Texas First Rentals LLC
Po Box 650869
Dallas, TX 75265-0869

Texas First Rentals, LLC
Attorney of Record - Zachary J. Fanucchi
Caldwell East & Finlayson PLLC
700 N. St. Marys Street, Suite 1825
San Antonio, Texas 78205-3545

Texas Regional Bank
PO Box 5555
McAllen, TX 78502-5555

Texas Workforce Commission
Office of Attorney General
BK/Collections
P.O. BOX 12548, MC008
Austin, TX 787112548

The Lane Law Firm
6200 Savoy Dr Ste 1150
Houston, TX 77036-3369

The Law Office of Jason Gang, PLLC
1245 Hewlett Plaza #478
Hewlett, NY 11557-4021

U.S. Small Business Administration
Little Rock Commercial Loan Servicing Ce
2120 Riverfront Drive Suite 100
Little Rock, AR 72202-1794

U.S. Small Business Administration
Steven B. Bass
Assistant United States Attorney
903 San Jacinto Blvd., Suite 334
Austin, Texas 78701-2449

United Rentals
100 First Stamford Place Suite 700
Stamford, CT 06902-9200

United States Trustee - AU12
United States Trustee
903 San Jacinto Blvd, Suite 230
Austin, TX 78701-2450

Michael G. Colvard
Martin & Drought, PC
Weston Centre
112 E Pecan St, Suite 1616
San Antonio, TX 78205-8902

Robert Chamless Lane
The Lane Law Firm, PLLC
6200 Savoy Dr, Suite 1150
Houston, TX 77036-3369

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

CAT Financial
PO Box 340001
Nashville, TN 37203

Marshall & Singleton, PLC
PO Box 4034
Jonesboro, AR 72401

Southstar Financial, LLC
840 Lowcountry Blvd
Mount Pleasant, SC 29464

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

End of Label Matrix
Mailable recipients 78
Bypassed recipients 3
Total 81